

Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. Her claim was dismissed and Ms. Scott received her Right to Sue Notice on August 2, 2004. On July 1, 2005, Ms. Scott filed suit with this court. Defendant now moves for summary judgment.

II. BACKGROUND

Ms. Scott was hired by Defendant on or about February 14, 2002. In October of that year, she converted to Islam. According to her allegations, Ms. Scott's relationship with her coworkers significantly worsened after her religious conversion. On September 25, 2003, her employment was terminated. Ms. Scott states that her supervisors told her she was fired because of her unauthorized use of the internet while at work and because she misrepresented her hours on her time-sheet. Ms. Scott disputes that justification, stating that other employees engaged in the same activity but were not fired.

III. DISCUSSION

Summary Judgment Standard

Summary judgment is appropriate when the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(c). A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under the applicable rule of law, *Id.* Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment, *Id.* In deciding whether there is a disputed issue of material fact, the court must view the evidence in favor of the nonmoving party by extending any

reasonable favorable inference to that party; in other words, “[T]he nonmoving party's evidence ‘is to be believed, and all justifiable inferences are to be drawn in [that party's] favor,’” Hunt v. Cromartie, 526 U.S. 541, 552 (1999), quoting, Anderson, 477 U.S. at 255.

Title VII

Under 42 U.S.C. § 2000e-5(f)(1), a party must file a Title VII claim within ninety days of receiving the Right to Sue Notice. Ms. Scott received her Right to Sue Notice on August 2, 2004 but did not file suit until July 1, 2005. Therefore, Ms. Scott’s claim was filed long after the ninety day period in which she was entitled to file.

However, the Supreme Court has established a policy of treating Title VII time limits as limitation periods that are subject to equitable tolling. Johnson v. Al Tech Specialties Steel Corp., 731 F.2d 143, 146 (2d Cir. 1984). Therefore, the court can extend the limitations period if the plaintiff demonstrates a recognized equitable consideration. Richardson v. Hartford Bd. of Educ., No. 98-1910, 1999 U.S. Dist. LEXIS 22757, at *10 (D. Conn. 1999). For example, in Ramos v. Port Authority, No. 76-312, 1976 U.S. Dist. LEXIS 14468 (D.N.Y. 1976), the court allowed an extension where the EEOC misinformed the Plaintiff as to the time period in which she was allowed to file her claim. Equitable tolling has also been allowed ““in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.”” Nearhood v. Tops Mkts., Inc., 76 F. Supp. 2d 304, 306 (D.N.Y. 1999). But equitable tolling is “generally applicable only where the plaintiff has not received adequate notice of the triggering of the filing period due to fortuitous

circumstances beyond his or her control that delay actual receipt of the EEOC notice.”

Richardson 1999 LEXIS 22757, at *10. Furthermore, equitable tolling is to be applied sparingly, Nearhood v. Tops Mkts., Inc., 76 F. Supp. 2d 304, 306 (D.N.Y. 1999), and “[c]ourts have been much less forgiving . . . ‘when the claimant fail[s] to exercise due diligence in preserving his legal rights.’” Id.

In the present case, Plaintiff states she was advised by the office of the clerk of the court that she could “sue at any time.” Assuming that allegation is true, Plaintiff may have received some erroneous advice. However, that advice does not constitute a recognized equitable consideration. It is undisputed that Plaintiff received her Right to Sue Notice on August 2, 2004 and that the notice appropriately advised her of the period within which she was entitled to file a claim.

Even if the above misinformation qualified as a recognized equitable consideration, Plaintiff did not exercise due diligence in preserving her legal rights. The relevant case law deals primarily with instances where a plaintiff was several days late in filing. In the present case, Plaintiff waited nine months after her right to sue had expired. Thus, leniency would be inappropriate in this case even if Plaintiff produced a recognized equitable consideration.

The court recognizes Plaintiff’s pro se status and sympathizes with her situation. However, it is well established that pro se plaintiffs are not excused from the filing requirements in cases such as this. See e.g., Brown v. Consolidated Freightway, 152 F.R.D. 656 (N.D. Ga. 1993) (pro se status did not excuse failure to comply with statutory filing period and complaint was dismissed as untimely because it was filed one day after 90-day filing period had expired).

As there is no genuine issue as to any material fact in this case, and it is undisputed that Plaintiff filed her complaint after the period within which she was entitled to file, Defendant's motion for summary judgment should be granted.

IV. CONCLUSION

For the reasons stated above, Defendant's motion for summary judgment is granted. The Court will enter an order implementing this opinion.

/s/ Dickinson R. Debevoise
DICKINSON R. DEBEVOISE, U.S.S.D.J.

Dated: November 14, 2005_____